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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/016,079	12/12/2001	Yutaka Hasegawa	SUZU:002	6932

7590 02/26/2007  
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Ashburn, VA 20146-0826

EXAMINER
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BOVEJA, NAMRATA

ART UNIT	PAPER NUMBER
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3622

MAIL DATE	DELIVERY MODE
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02/26/2007

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

**Advisory Action  
Before the Filing of an Appeal Brief**

Application No.

10/016,079

Applicant(s)

HASEGAWA, YUTAKA

Examiner

Namrata Boveja

Art Unit

3622

**--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

THE REPLY FILED 27 December 2006 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires \_\_\_\_\_ months from the mailing date of the final rejection.  
b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**NOTICE OF APPEAL**

2. ☐ The Notice of Appeal was filed on \_\_\_\_\_. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

**AMENDMENTS**

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because  
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);  
(b) ☐ They raise the issue of new matter (see NOTE below);  
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or  
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).  
5. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.  
6. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).  
7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.  
The status of the claim(s) is (or will be) as follows:  
Claim(s) allowed: \_\_\_\_\_.  
Claim(s) objected to: \_\_\_\_\_.  
Claim(s) rejected: \_\_\_\_\_.  
Claim(s) withdrawn from consideration: \_\_\_\_\_.

**AFFIDAVIT OR OTHER EVIDENCE**

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).  
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).  
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

**REQUEST FOR RECONSIDERATION/OTHER**

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:  
SEE CONTINUATION SHEET.  
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). \_\_\_\_\_.  
13. ☐ Other: \_\_\_\_\_.

The Applicant arguments in reference to the Final Office Action are not persuasive.

The previously made 103 rejections are maintained.

In reference to the 103 rejections, the Applicant argues that Yamanaka does not teach paying the advertisement fees solely to the proprietors of the original works, while allowing the user to freely create secondary works from the original works. With respect to this, the Applicant does not claim paying fees solely to the proprietor and allowing the user to freely create secondary works from the original works, so the Applicant is arguing what he has not claimed. In fact, claim 1 recites "allocating section that allocates at least part of the advertisement fees collected from the subscribing advertisers to the content proprietors," and therefore the fees are not going to them solely. With respect to paying fees to the proprietors of the original works, Yamanaka teaches this limitation, since money collected from the advertisers is given to the content providers in part based on how many times the content was accessed, and if the content is being posted by an agent of the proprietor (i.e. owner) then the money can go to the agent who can then give it to the proprietor (i.e. owner) after possibly deducting his fees for providing his services (page 1 paragraph 17, page 2 paragraph 25, page 4 paragraph 61, page 8 paragraph 142, page 12 paragraph 198 and 200, page 13 paragraph 226, page 20 paragraph 343, and Figure 20).

Applicant states that he disagrees with the Examiner's assessment that Yamanaka discloses submitting a creator's work by another. The Examiner respectfully disagrees and would like to point the Applicant again to paragraphs 137 and 139 where Yamanaka discusses letting 3<sup>rd</sup> parties such as agents post content for the proprietors, so they can contribute a secondary work of another creator, i.e. work of the proprietor in this case.

In reference to the Official Notice, the Applicant argues that there would have been no motivation in Yamanaka for the user or holder to include a legal notice or information to the work of another. The Examiner respectfully disagrees with the Applicant for three primary reasons. First, an agent is in a relationship with the proprietor, owner of the content, and would naturally be looking out for his client's best interest and therefore would want to help make sure that the client's posted content is served with legal notices as appropriate to protect his client and to maximize his client's revenue collecting potential. Secondly, proprietors hire agents and others to perform tasks for them, and it is very feasible for such a task to include posting of a legal notice by the agent. Thirdly, in general, if somebody posts work online, they generally either include a legal disclaimer or give credit to the source of the content, since to not do so could have serious legal consequences. For example, just because a user posts a music file online doesn't mean someone else can download it for free, since the first user may have paid royalties and the second would need to do so in order to have legal access to the file. Therefore, there would have been motivation by a third party or an agent to include a legal notice for these reasons.

RAQUEL ALVAREZ  
PRIMARY EXAMINER